

## **BILL ANALYSIS**

C.S.H.B. 3488  
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Economic & Small Business Development  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that when a corporation states a social purpose the extent of the duty of the corporation's board of directors to consider that social purpose is unclear. C.S.H.B. 3488 seeks to provide for a new kind of corporation, a public benefit corporation, where one or more public benefits are identified and the corporation is managed in a way that balances shareholder interests and the public benefits.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3488 amends the Business Organizations Code to authorize a for-profit corporation to elect to be a public benefit corporation governed by the bill's provisions instead of including in its certificate of formation or amending its certificate of formation to include one or more social purposes promoting positive impacts on society or the environment or minimizing one or more adverse impacts of the corporation's activities on society or the environment by including in its initially filed certificate of formation or, subject to the bill's provisions, by amending its certificate of formation to include one or more specific public benefits to be promoted by the corporation and, instead of including the statement of the type of filing entity being formed as required for a certificate of formation, a statement that the filing entity is a for-profit corporation selecting to be a public benefit corporation.

C.S.H.B. 3488 entitles an owner of an ownership interest in a domestic entity subject to dissenters' rights to dissent from an amendment to a domestic for-profit corporation's certificate of formation to add the provisions required by the bill for election as a public benefit corporation or from such an amendment to delete those provisions, which in effect cancels the corporation's election to be a public benefit corporation, if the owner owns shares that were entitled to vote on the amendment. The bill prohibits an owner of an ownership interest in a domestic for-profit corporation subject to dissenters' rights from dissenting from such an amendment if the shares held by the owner are part of a class or series of shares, on the record date set for purposes of determining which owners are entitled to vote on the amendment, listed on a national securities exchange or held of record by at least 2,000 owners. The bill establishes that, with respect to such an amendment, "responsible organization" means the corporation for purposes of dissenting owners' rights.

C.S.H.B. 3488 establishes that a public benefit corporation is a domestic for-profit corporation that is intended to operate in a responsible and sustainable manner and produce a public benefit or benefits. The bill requires a public benefit corporation, in accomplishing its purpose, to be managed in a manner that balances the shareholders' pecuniary interests, the best interests of those persons materially affected by the corporation's conduct, and the public benefit or benefits specified in the corporation's certificate of formation. The bill authorizes the name of the public benefit corporation specified in its certificate of formation to contain the words "public benefit corporation," the abbreviation "P.B.C.," or the designation "PBC." The bill requires the corporation, if the name does not contain those words or that abbreviation or designation and before issuing unissued shares or disposing of treasury shares and except as provided by the bill, to provide notice that the corporation is a public benefit corporation to any person to whom the unissued shares are issued or who acquires the treasury shares. The bill expressly does not require the notice to be provided if the issuance or disposal of such shares is under an offering registered under the federal Securities Act of 1933 or if at the time of the issuance or disposal of shares the corporation has a class of securities registered under the federal Securities Exchange Act of 1934. The bill excepts a public benefit corporation that includes in its name the words, abbreviation, or designation permitted by the bill from the requirement that the name of a corporation or foreign corporation contain the word "company," "corporation," "incorporated," or "limited" or an abbreviation of one such word. The bill subjects a corporation that elects to be a public benefit corporation to statutory provisions applicable to for-profit corporations.

C.S.H.B. 3488 prohibits a domestic for-profit corporation that is not a public benefit corporation, without the approval of the owners of two-thirds of the outstanding shares of the corporation entitled to vote on the matter, which must be a vote by class or series of shares if otherwise required by statutory provisions relating to voting requirements for certain fundamental business actions or transactions, from amending the corporation's certificate of formation to comply with the bill's requirements to elect for the corporation to be governed as a public benefit corporation; from merging or effecting an interest exchange with another entity if as a result of the merger or exchange the shares in the corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity; or from converting into a foreign public benefit corporation or similar entity. The bill provides for the inapplicability of these provisions.

C.S.H.B. 3488 prohibits a domestic entity that is not a domestic for-profit corporation, without the approval of the owners of two-thirds of the outstanding ownership interests of the entity entitled to vote on the matter, from merging or effecting an interest exchange with another entity if as a result of the merger or exchange the ownership interests in the entity would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity or from converting into a domestic or foreign public benefit corporation or similar entity. The bill prohibits a public benefit corporation, without the approval of two-thirds of the outstanding shares of the corporation entitled to vote on the matter, which must be a vote by class or series of shares if otherwise required by statutory provisions relating to voting requirements for certain fundamental business actions and transactions, from amending the corporation's certificate of formation to delete or amend a provision required for election as a public benefit corporation under the bill or described by a bill provision regarding certain statements relating to the corporation's promotion of the public benefit or benefits; from converting into a domestic or foreign entity that meets certain criteria; or from merging or effecting an interest exchange with another entity if as a result of the merger or exchange the shares in the corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign entity that meets certain criteria. The bill prohibits a nonprofit corporation or nonprofit association from converting into a public benefit corporation or, with respect to a merger governed by these bill provisions, from being a party to the merger. The bill establishes that an owner of a domestic entity affected by an action described by these bill provisions has the rights of dissent and appraisal as an owner of an ownership interest in a domestic entity and to the extent provided by statutory provisions relating to dissenting owners' rights.

C.S.H.B. 3488 requires a stock certificate issued by a public benefit corporation to note conspicuously that the corporation is a public benefit corporation governed by the bill's provisions regarding public benefit corporations and requires a notice for an uncertificated ownership interest sent by a public benefit corporation to state conspicuously that the corporation is a public benefit corporation and is governed by the bill's provisions regarding public benefit corporations.

C.S.H.B. 3488 requires the board of directors of a public benefit corporation to manage or direct the corporation's business and affairs in a manner that balances the pecuniary interests of the shareholders, the best interests of those persons materially affected by the corporation's conduct, and the specific public benefit or benefits specified in the corporation's certificate of formation. The bill authorizes certain shareholders of a public benefit corporation, as such shareholders are defined by the bill, to maintain a derivative action on behalf of the corporation to enforce compliance with these requirements. The bill establishes that a director does not, by virtue of the public benefit provisions included in the corporation's certificate of formation or by virtue of the corporation's purpose and required balanced management, owe any duty to any person because of any interest the person has in the public benefit or benefits specified in the certificate of formation or any interest materially affected by the corporation's conduct. The bill establishes that, with respect to a decision implicating the balance requirement, a director is considered to have satisfied the director's duties to shareholders and the corporation if the director's decision is both informed and disinterested and is not a decision that no person of ordinary, sound judgment would approve. The bill authorizes a public benefit corporation's certificate of formation to include a provision that any disinterested failure of a director to satisfy the director's duties does not, for the purposes of the applicable provisions of the Business Organizations Code, constitute an act or omission not in good faith or a breach of the duty of loyalty.

C.S.H.B. 3488 requires a public benefit corporation to include in each notice of a shareholders meeting a statement to the effect that the corporation is a public benefit corporation governed by the applicable bill provisions and requires a public benefit corporation, at least biennially, to provide to the corporation's shareholders a statement pertaining to the corporation's promotion of the public benefit or benefits specified in the corporation's certificate of formation and promotion of the best interests of those materially affected by the corporation's conduct. The bill sets out the required contents of such a statement and authorizes a public benefit corporation's certificate of formation or bylaws to require that the corporation provide the required statement more frequently than biennially or make that statement available to the public. The bill's provisions regarding public benefit corporations expressly do not apply to a corporation that is not a public benefit corporation, except as otherwise provided by those provisions. The bill establishes that its provisions regarding public benefit corporations control to the extent of a conflict between those provisions and another statutory provision relating to for-profit corporations or another Business Organizations Code provision applicable to for-profit corporations.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3488 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 3.007, Business	SECTION 1. Section 3.007, Business

Organizations Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) Notwithstanding Section 2.008 and subject to Section 21.954, a for-profit corporation may include one or more social purposes in addition to the purpose or purposes required to be stated in the corporation's certificate of formation by Section 3.005(a)(3). The corporation may also include in the certificate of formation a provision that the board of directors and officers of the corporation shall consider any social purpose specified in the certificate of formation in discharging the duties of directors or officers under this code or otherwise.

(e) Notwithstanding Section 2.008, instead of including in its certificate of formation or amending its certificate of formation to include one or more social purposes as provided by Subsection (d), a for-profit corporation may elect to become a public benefit corporation under Subchapter S, Chapter 21, in the manner provided by this subsection and that subchapter. The certificate of formation of a public benefit corporation must:

- (1) specify one or more specific public benefits, as defined by Section 21.952, to be promoted by the corporation; and
- (2) state in its heading that the corporation is a public benefit corporation.

No equivalent provision.

Organizations Code, is amended by adding Subsection (e) to read as follows:

No equivalent provision.

(e) Notwithstanding Section 2.008, instead of including in its certificate of formation or amending its certificate of formation to include one or more social purposes as provided by Subsection (d), a for-profit corporation may elect to be a public benefit corporation governed by Subchapter S, Chapter 21, by including in its initially filed certificate of formation, or, subject to Section 21.954, by amending its certificate of formation to include:

- (1) one or more specific public benefits, as defined by Section 21.952, to be promoted by the corporation; and
- (2) instead of the statement required by Section 3.005(a)(2), a statement that the filing entity is a for-profit corporation electing to be a public benefit corporation.

SECTION 2. Section 10.352(2), Business Organizations Code, is amended to read as follows:

- (2) "Responsible organization" means:
- (A) the organization responsible for:
    - (i) the provision of notices under this subchapter; and
    - (ii) the primary obligation of paying the fair value for an ownership interest held by a dissenting owner;
  - (B) with respect to a merger or conversion:
    - (i) for matters occurring before the merger or conversion, the organization that is merging or converting; and
    - (ii) for matters occurring after the merger or conversion, the surviving or new organization that is primarily obligated for the payment of the fair value of the dissenting owner's ownership interest in the

merger or conversion;

(C) with respect to an interest exchange, the organization the ownership interests of which are being acquired in the interest exchange; ~~and~~

(D) with respect to the sale of all or substantially all of the assets of an organization, the organization the assets of which are to be transferred by sale or in another manner; and

(E) with respect to an amendment to a domestic for-profit corporation's certificate of formation described by Section 10.354(a)(1)(G), the corporation.

No equivalent provision.

SECTION 3. Section 10.354, Business Organizations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Subject to Subsection (b), an owner of an ownership interest in a domestic entity subject to dissenters' rights is entitled to:

(1) dissent from:

(A) a plan of merger to which the domestic entity is a party if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of merger;

(B) a sale of all or substantially all of the assets of the domestic entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the sale;

(C) a plan of exchange in which the ownership interest of the owner is to be acquired;

(D) a plan of conversion in which the domestic entity is the converting entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of conversion;

(E) a merger effected under Section 10.006 in which:

(i) the owner is entitled to vote on the merger; or

(ii) the ownership interest of the owner is converted or exchanged; ~~or~~

(F) a merger effected under Section 21.459(c) in which the shares of the shareholders are converted or exchanged; or

(G) if the owner owns shares that were entitled to vote on the amendment, an

amendment to a domestic for-profit corporation's certificate of formation to:

(i) add the provisions required by Section 3.007(e) to elect to be a public benefit corporation; or

(ii) delete the provisions required by Section 3.007(e), which in effect cancels the corporation's election to be a public benefit corporation; and

(2) subject to compliance with the procedures set forth in this subchapter, obtain the fair value of that ownership interest through an appraisal.

(d) Notwithstanding Subsection (a), an owner of an ownership interest in a domestic for-profit corporation subject to dissenters' rights may not dissent from an amendment to the corporation's certificate of formation described by Subsection (a)(1)(G) if the shares held by the owner are part of a class or series of shares, on the record date set for purposes of determining which owners are entitled to vote on the amendment:

(1) listed on a national securities exchange; or

(2) held of record by at least 2,000 owners.

SECTION 2. Chapter 21, Business Organizations Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. PUBLIC BENEFIT CORPORATIONS

Sec. 21.951. LAW APPLICABLE TO PUBLIC BENEFIT CORPORATIONS; FORMATION. (a) A corporation may elect to become a public benefit corporation as provided by Section 3.007(e) that is governed by this subchapter.

(b) If a corporation elects to become a public benefit corporation, the corporation is subject to the other provisions of this chapter and other provisions of this code applicable to for-profit corporations.

(c) To the extent of a conflict between this subchapter and another provision in this chapter, this subchapter controls.

Sec. 21.952. DEFINITIONS. In this subchapter:

(1) "Public benefit" means a positive effect, or a reduction of a negative effect, on one or more categories of persons, entities, communities, or interests, other than

SECTION 4. Chapter 21, Business Organizations Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. PUBLIC BENEFIT CORPORATIONS

Sec. 21.951. LAW APPLICABLE TO PUBLIC BENEFIT CORPORATIONS; FORMATION. (a) A for-profit corporation may elect under Section 3.007(e) to be a public benefit corporation that is governed by this subchapter.

(b) If a corporation elects to be a public benefit corporation, the corporation is subject to the other provisions of this chapter and other provisions of this code applicable to for-profit corporations.

(c) To the extent of a conflict between this subchapter and another provision of this chapter or another provision of this code applicable to for-profit corporations, this subchapter controls.

Sec. 21.952. DEFINITIONS. In this subchapter:

(1) "Public benefit" means a positive effect, or a reduction of a negative effect, on one or more categories of persons, entities, communities, or interests, other than

shareholders in their capacities as shareholders, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature.

(2) "Public benefit corporation" means a for-profit corporation that is formed under Section 3.007(e) and the other applicable provisions of Chapter 3 and is subject to this subchapter.

(3) "Public benefit provisions" means the provisions of a certificate of formation contained in the document as specified by Section 3.007(e) and this subchapter.

Sec. 21.953. PURPOSE OF PUBLIC BENEFIT CORPORATION; NAME OF CORPORATION.

(a) A public benefit corporation is a domestic for-profit corporation that is intended to produce a public benefit or benefits and to operate in a responsible and sustainable manner.

(b) To accomplish the purpose of the corporation described by Subsection (a), a public benefit corporation shall be managed in a manner that balances:

- (1) the shareholders' pecuniary interests;
- (2) the best interests of those persons materially affected by the corporation's conduct; and
- (3) the public benefit or benefits specified in the corporation's certificate of formation.

(c) The name of the public benefit corporation must contain the words "public benefit corporation," the abbreviation

"P.B.C.," or the designation "PBC," which is considered to satisfy the applicable requirements of Chapter 5.

No equivalent provision.

shareholders in their capacities as shareholders of the corporation, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature.

(2) "Public benefit corporation" means a domestic for-profit corporation that elects under Section 3.007(e) to be a public benefit corporation governed by this subchapter.

(3) "Public benefit provisions" means the provisions of a certificate of formation that are required by Section 3.007(e) and this subchapter.

Sec. 21.953. PURPOSE OF PUBLIC BENEFIT CORPORATION; NAME OF CORPORATION.

(a) Same as introduced version.

(b) Same as introduced version.

(c) The name of the public benefit corporation specified in its certificate of formation may contain the words "public benefit corporation," the abbreviation "P.B.C.," or the designation "PBC." If the name does not contain those words or that abbreviation or designation, the corporation must, before issuing unissued shares or disposing of treasury shares and except as provided by Subsection (d), provide notice that the corporation is a public benefit corporation to any person:

- (1) to whom the unissued shares are issued;
- or
- (2) who acquires the treasury shares.

(d) Notice is not required to be provided under Subsection (c) if:

- (1) the issuance or disposal of shares described by that subsection is under an offering registered under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.); or

No equivalent provision.

Sec. 21.954. CERTAIN AMENDMENTS AND MERGERS; VOTER APPROVAL REQUIRED.

(a) Notwithstanding any other provision of this chapter, a corporation that is not a public benefit corporation may not, without the approval of 90 percent of the owners of

outstanding shares of each class of shares of the corporation of which there are outstanding shares, whether voting or nonvoting:

(1) amend the corporation's certificate of formation to include a specific public benefit; or

(2) merge or consolidate with or into another entity if, as a result of the merger or consolidation, the shares in the corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity.

(b) This section does not apply:

(1) until the corporation has received payment for any of the corporation's capital stock; or

(2) with respect to a nonstock corporation, until the corporation has members.

(c) Any shareholder of a corporation that is not a public benefit corporation is entitled to an appraisal of the fair value of the shareholder's shares of stock by a court, if the shareholder:

(1) holds shares of the corporation immediately before the effective date of:

(A) an amendment to the corporation's certificate of formation to include a specific public benefit authorized by Section 3.007(e); or

(2) at the time of the issuance or disposal of shares described by that subsection, the corporation has a class of securities registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.).

(e) Section 5.054(a) does not apply to a public benefit corporation that includes in its name the words, abbreviation, or designation permitted by Subsection (c).

Sec. 21.954. CERTAIN AMENDMENTS, MERGERS, EXCHANGES, AND CONVERSIONS; VOTER APPROVAL REQUIRED.

(a) Notwithstanding any other provision of this chapter, a domestic for-profit corporation that is not a public benefit corporation may not, without the approval of the owners of two-thirds of the outstanding shares of the corporation entitled to vote on the matter, which must be a vote by class or series of shares if otherwise required by Section 21.364, 21.457, or 21.458:

(1) amend the corporation's certificate of formation to comply with the requirements of Section 3.007(e) to elect for the corporation to be governed as a public benefit corporation;

(2) merge or effect an interest exchange with another entity if, as a result of the merger or exchange, the shares in the corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity; or

(3) convert into a foreign public benefit corporation or similar entity.

(b) Subsection (a) does not apply until the corporation has issued and outstanding shares of the corporation's capital stock.

No equivalent provision.



(B) a merger or consolidation that would result in the conversion of the corporation's shares into or exchange of the corporation's shares for the right to receive shares or other equity interests in a domestic or foreign public benefit corporation or similar entity; and

(2) has not:

(A) voted in favor of an amendment, merger, or consolidation described by Subdivision (1); or

(B) given written consent to the action under the applicable provisions of this code.

No equivalent provision.

(d) Notwithstanding any other provision of this chapter, a corporation that is a public benefit corporation may not, without the approval of two-thirds of the owners of outstanding shares of each class of the stock of the corporation of which there are outstanding shares, whether voting or nonvoting:

(1) amend the corporation's certificate of formation to delete or amend a provision described by Section 3.007(e)(1) or 21.957(c); or

(2) merge or consolidate with or into another entity if, as a result of the merger or

(c) A domestic entity that is not a domestic for-profit corporation may not, without the approval of the owners of two-thirds of the outstanding ownership interests of the entity entitled to vote on the matter:

(1) merge or effect an interest exchange with another entity if, as a result of the merger or exchange, the ownership interests in the entity would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity; or

(2) convert into a domestic or foreign public benefit corporation or similar entity.

(d) Notwithstanding any other provision of this chapter, a public benefit corporation may not, without the approval of two-thirds of the outstanding shares of the corporation entitled to vote on the matter, which must be a vote by class or series of shares if otherwise required by Section 21.364, 21.457, or 21.458:

(1) amend the corporation's certificate of formation to delete or amend a provision required by Section 3.007(e) or described by Section 21.957(c);

(2) convert into a domestic or foreign entity:

(A) that is not a public benefit corporation or similar entity; and

(B) that does not contain in its certificate of formation or similar governing document provisions identical to the provisions in the certificate of formation of the public benefit corporation containing the public benefit or benefits specified under Section 3.007(e) or imposing requirements under Section 21.957(c); or

(3) merge or effect an interest exchange with another entity if, as a result of the

consolidation, the shares in the corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign corporation:

(A) that is not a public benefit corporation or similar entity; and

(B) the certificate of formation, or similar governing document of which does not contain identical provisions to the provisions containing the public benefit or benefits that are specified in the certificate of formation under Section 3.007(e) or imposing requirements under Section 21.957(c).

(e) Notwithstanding any other provision of this section, a nonprofit nonstock corporation may not be a constituent corporation to any merger or consolidation governed by this section.

Sec. 21.955. STOCK CERTIFICATES; NOTICES REGARDING UNCERTIFICATED STOCK. (a) A stock certificate issued by a public benefit corporation must note conspicuously that the corporation is a public benefit corporation formed under this subchapter.

(b) A notice sent by a public benefit corporation under Section 3.205 must state conspicuously that the corporation is a public benefit corporation formed under Section 3.007(e) and is governed by this subchapter and the other applicable provisions of this code.

Sec. 21.956. DUTIES OF DIRECTORS.

(a) The board of directors of a public benefit corporation shall manage or direct the business and affairs of the corporation in a manner that balances:

(1) the pecuniary interests of the shareholders;

(2) the best interests of those persons materially affected by the corporation's conduct; and

(3) the specific public benefit or benefits specified in the corporation's certificate of

merger or exchange, the shares in the corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign entity:

(A) that is not a public benefit corporation or similar entity; and

(B) that does not contain in its certificate of formation or similar governing document provisions identical to the provisions in the certificate of formation of the public benefit corporation containing the public benefit or benefits specified under Section 3.007(e) or imposing requirements under Section 21.957(c).

(e) Notwithstanding any other provision of this section, a nonprofit corporation or nonprofit association may not:

(1) with respect to a merger governed by this section, be a party to the merger; or

(2) convert into a public benefit corporation.

(f) An owner of a domestic entity affected by an action described by this section has the rights of dissent and appraisal as an owner described by Section 10.354 and to the extent provided by Subchapter H, Chapter 10.

Sec. 21.955. STOCK CERTIFICATES; NOTICES REGARDING UNCERTIFICATED STOCK. (a) A stock certificate issued by a public benefit corporation must note conspicuously that the corporation is a public benefit corporation governed by this subchapter.

(b) A notice sent by a public benefit corporation under Section 3.205 must state conspicuously that the corporation is a public benefit corporation governed by this subchapter.

Sec. 21.956. DUTIES OF DIRECTORS.

(a) Same as introduced version.

formation.

(b) A director of a public benefit corporation does not, by virtue of the public benefit provisions specified in the certificate of formation as provided by Section 3.007(e) or by virtue of the purpose and requirements of Sections 21.953(a) and (b), owe any duty to any person because of:

(1) any interest the person has in the public benefit or benefits specified in the certificate of formation; or

(2) any interest materially affected by the corporation's conduct.

(c) With respect to a decision implicating the balance requirement of Subsection (a), a director of a public benefit corporation is considered to have satisfied the director's fiduciary duties to shareholders and the corporation if the director's decision is both informed and disinterested and a decision that a person of ordinary, sound judgment would approve.

(d) The certificate of formation of a public benefit corporation may include a provision that any disinterested failure of a director to satisfy the requirements of this section does not, for the purposes of the applicable provisions of this code, constitute an act or omission not in good faith or a breach of the duty of loyalty.

Sec. 21.957. PERIODIC STATEMENTS AND THIRD-PARTY CERTIFICATION.

(a) A public benefit corporation shall include in each notice of a meeting of shareholders a statement to the effect that the corporation is a public benefit corporation governed by this subchapter.

(b) A public benefit corporation, at least biennially, shall provide to the corporation's shareholders a statement pertaining to the corporation's promotion of the public benefit or benefits specified in the corporation's certificate of formation and promotion of the best interests of those materially affected by the corporation's conduct. The statement must include:

(1) the objectives the board of directors has established to promote the public benefit or benefits and interests;

(2) the standards the board of directors has adopted to measure the corporation's progress in promoting the public benefit or benefits and interests;

(3) objective factual information based on

(b) A director of a public benefit corporation does not, by virtue of the public benefit provisions included in the certificate of formation or by virtue of the purpose and requirements of Sections 21.953(a) and (b), owe any duty to any person because of:

(1) any interest the person has in the public benefit or benefits specified in the certificate of formation; or

(2) any interest materially affected by the corporation's conduct.

(c) With respect to a decision implicating the balance requirement of Subsection (a), a director of a public benefit corporation is considered to have satisfied the director's duties to shareholders and the corporation if the director's decision is both informed and disinterested and is not a decision that no person of ordinary, sound judgment would approve.

(d) Same as introduced version.

Sec. 21.957. PERIODIC STATEMENTS.

(a) Same as introduced version.

(b) Same as introduced version.

those standards regarding the corporation's success in meeting the objectives for promoting the public benefit or benefits and interests; and

(4) an assessment of the corporation's success in meeting the objectives and promoting the public benefit or benefits and interests.

(c) The certificate of formation or bylaws of a public benefit corporation may require that the corporation:

(1) provide the statement required by Subsection (b) more frequently than biennially;

(2) make the statement required by Subsection (b) available to the public; or

(3) use a third-party standard in connection with or attain a periodic third-party certification addressing the corporation's promotion of the public benefit or benefits specified in the certificate of formation or the best interests of those persons materially affected by the corporation's conduct.

Sec. 21.958. DERIVATIVE SUITS. (a) In this section, "shareholder" means:

(1) shareholders of a public benefit corporation that own, individually or collectively, at least two percent of the corporation's outstanding shares; or

(2) shareholders of a public benefit corporation the shares of which are listed on a national securities exchange that own the lesser of:

(A) the percentage of shares described by Subdivision (1); or

(B) shares whose market value is at least \$2,000,000.

(b) A shareholder of a public benefit corporation may bring a derivative action to enforce compliance with the requirements of Section 21.956(a).

Sec. 21.959. NO EFFECT ON OTHER CORPORATIONS. Except as provided by Section 21.954, this subchapter does not apply to a corporation that is not a public benefit corporation.

SECTION 3. This Act takes effect September 1, 2017.

(c) The certificate of formation or bylaws of a public benefit corporation may require that the corporation:

(1) provide the statement required by Subsection (b) more frequently than biennially; or

(2) make the statement required by Subsection (b) available to the public.

Sec. 21.958. DERIVATIVE SUITS. (a) In this section, "shareholder" means:

(1) shareholders of a public benefit corporation that own, individually or collectively, at least two percent of the corporation's outstanding shares; or

(2) shareholders of a public benefit corporation the shares of which are listed on a national securities exchange that own at least the lesser of:

(A) the percentage of shares described by Subdivision (1); or

(B) shares whose market value is at least \$2 million.

(b) A shareholder of a public benefit corporation may maintain a derivative action on behalf of the corporation to enforce compliance with the requirements of Section 21.956(a).

Sec. 21.959. Same as introduced version.

SECTION 5. Same as introduced version.